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OFFICE OF PETITIONS

In re Application of
Hee Jeong Kim
Application No. 10/777,700
Filed: February 11, 2005
Attorney Docket No. 2080-3228

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition filed April 29, 2005, requesting that the above-identified application be accorded a filing date of February 10, 2005, instead of the presently accorded filing date of February 11, 2005.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on February 10, 2005, pursuant to the requirements of 37 CFR 1.10(d). Specifically, petitioners are implying that the "date-in" of February 11, 2005, was incorrectly entered by the USPS.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date.¹ (emphasis added)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s)

¹See 37 CFR 1.6(a).

or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

The petition lacks the showing required by item (3) above. The express mail label provided has a date-in of February 11, 2005. Petitioners have not presented sufficient corroborating evidence that the correspondence was deposited in Express Mail service prior to the last scheduled pickup for the day on February 10, 2005. If the error was due to the USPS entering the wrong date on the Express Mail label, petitioners should request a letter from the USPS stating that the correct date of deposit is February 10, 2005, and explaining why the error occurred. Additionally, petitioners may provide evidence that came into being after deposit and within one business day of deposit of the application in Express Mail. Such evidence may include a mail log with an entry made after the application was deposited in Express Mail, or a letter to the client sent after the mailing of the application confirming the mailing of the application.

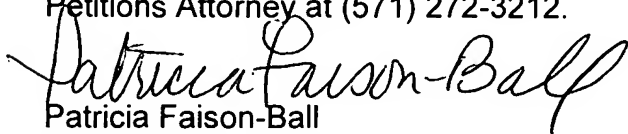
The date on the USPS Pickup Service Statement submitted is not clear and the statements provided by Emil D. Byun and Margie A. Uribe don't specifically state that the express mail package in question was deposited in the mailroom on February 10, 2005. The statements provided by Byun and Uribe identify what the procedure is for depositing mail and what "likely" occurred on February 10, 2005.

Additionally, the petition fee in the amount of \$400.00 has been charged to deposit account no. 50-2290. Petitioner may be due a refund if it is determined that the error in the filing date is attributed to the USPS.

Accordingly, the petition is **DISMISSED**.

This matter is being referred to Technology Center 3661 for examination in due course but with the presently accorded filing date of February 10, 2005.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions